

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 16, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

KWIK LOK CORP., a Washington
Corporation,

Plaintiff/Counterclaim Defendant,

vs.

MATTHEWS INTERNATIONAL
CORP., D/B/A MATTHEWS
AUTOMATION SOLUTIONS, a
Pennsylvania Corporation,

Defendant/Counterclaim Plaintiff,

vs.

MATTHEW INTERNATIONAL
CORP., a Pennsylvania corporation,

Third-Party Plaintiff,

vs.

SOLARIS LASER, S.A., a Polish entity,

Third-Party Defendant.

No. 1:22-cv-03014-MKD

ORDER GRANTING CONSTRUED
STIPULATED MOTION FOR
PROTECTIVE ORDER; AND
PROTECTIVE ORDER

ECF No. 28

1 Before the Court is the Parties' Stipulated Protective Order, ECF No. 28,
2 which the Court construes as a stipulated motion for a protective order. This
3 Court finds good cause, under Federal Rule of Civil Procedure 26(c), to issue an
4 order to protect certain categories of information produced by a party in
5 discovery in this matter to prevent annoyance, embarrassment, oppression, or
6 undue burden or expense.

7 Accordingly, **IT IS ORDERED:**

8 1. The Parties' Stipulated Motion for Protective Order, **ECF No. 28**, is
9 **GRANTED.**

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. The parties acknowledge that this agreement is consistent with Federal Rule of Civil Procedure 26(c). Accordingly, it does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. CONFIDENTIAL MATERIAL

For the purposes of this Order, “confidential” material shall include the following documents and tangible things produced or otherwise exchanged:

- Any agreement to which Matthews International Corporation (“Matthews”), Kwik Lok Corporation (“Kwik Lok”), and/or Solaris Laser, S.A. (“Solaris”) is a party.
- Documents and communications relating to testing, evaluations, and/or investigations of Kwik Lok’s 909A Machines and/or Solaris’ eMark ECO CO2 lasers (“eMark Lasers”).
- Documents and communications relating to purchasing, pricing, costs,

1 expenses, and/or sales data, including, but not limited to, negotiations over pricing,
2 between Matthews, Kwik Lok, and/or Solaris.

3 • Documents and communications containing or relating to confidential
4 research and development, production, manufacturing processes and/or formulae,
5 source code, technical designs, financial, technical, marketing, customer, sales,
6 strategic, and/or any other sensitive information.

7 • Documents and communications containing or relating to any party's
8 intellectual property, trade secrets, marketing material, negotiations over pricing,
9 sales agreements, or other sensitive information with its clients and/or any end users.

10 Documents and communications containing or relating to any investigation or
11 testing of the eMark Lasers between Kwik Lok and its clients and/or any end users.

12 • Documents and communications containing or relating to any
13 compensation or replacement of eMark Lasers between Kwik Lok and its clients
14 and/or any end users.

15 3. SCOPE

16 The protections conferred by this agreement cover not only confidential
17 material (as defined above), but also (1) any information copied or extracted from
18 confidential material; (2) all copies, excerpts, summaries, or compilations of
19 confidential material; and (3) any testimony, conversations, or presentations by
20 parties or their counsel that might reveal confidential material.

1 However, the protections conferred by this agreement do not cover
2 information that is in the public domain or becomes part of the public domain
3 through trial or otherwise.

4 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

5 4.1 Basic Principles. A receiving party may use confidential material that
6 is disclosed or produced by another party or by a non-party in connection with this
7 case only for prosecuting, defending, or attempting to settle this litigation.
8 Confidential material may be disclosed only to the categories of persons and under
9 the conditions described in this agreement. Confidential material must be stored and
10 maintained by a receiving party at a location and in a secure manner that ensures that
11 access is limited to the persons authorized under this agreement.

12 4.2 Disclosure of Confidential Information or Items. Unless otherwise
13 ordered by the court or permitted in writing by the designating party, a receiving
14 party may disclose any confidential material only to:

15 (a) the receiving party's counsel of record in this action, as well as
16 employees of counsel to whom it is reasonably necessary to disclose the information
17 for this litigation;

18 (b) the officers, directors, and employees (including in house
19 counsel) of the receiving party to whom disclosure is reasonably necessary for this
20 litigation, unless the parties agree that a particular document or material produced is

1 for Attorney's Eyes Only and is so designated;

2 (c) experts and consultants to whom disclosure is reasonably
3 necessary for this litigation and who have signed the "**Acknowledgment and**
4 **Agreement to Be Bound**" (Exhibit A);

5 (d) the court, court personnel, and court reporters and their staff;

6 (e) copy or imaging services retained by counsel to assist in the
7 duplication of confidential material, provided that counsel for the party retaining the
8 copy or imaging service instructs the service not to disclose any confidential material
9 to third parties and to immediately return all originals and copies of any confidential
10 material;

11 (f) during their depositions, witnesses in the action to whom
12 disclosure is reasonably necessary and who have signed the "Acknowledgment and
13 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating
14 party or ordered by the court. Pages of transcribed deposition testimony or exhibits
15 to depositions that reveal confidential material must be separately bound by the court
16 reporter and may not be disclosed to anyone except as permitted under this
17 agreement;

18 (g) the author or recipient of a document containing the information
19 or a custodian or other person who otherwise possessed or knew the information.

20 4.3 Filing Confidential Material. Before filing confidential material or

1 discussing or referencing such material in court filings, the filing party shall confer
2 with the designating party, in accordance with Federal Rule of Civil Procedure
3 5.2(e), to determine whether the designating party will remove the confidential
4 designation, whether the document can be redacted, or whether a motion to seal or
5 stipulation and proposed order is warranted. During the meet and confer process, the
6 designating party must identify the basis for sealing the specific confidential
7 information at issue, and the filing party shall include this basis in its motion to seal,
8 along with any objection to sealing the information at issue. Federal Rule of Civil
9 Procedure 5.2 sets forth the procedures that must be followed and the standards that
10 will be applied when a party seeks permission from the court to file material under
11 seal. A party who seeks to maintain the confidentiality of its information must
12 satisfy the requirements of Federal Rule of Civil Procedure 5.2 even if it is not the
13 party filing the motion to seal. Failure to satisfy this requirement will result in the
14 motion to seal being denied, in accordance with the strong presumption of public
15 access to the Court's files.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

18 Each party or non-party that designates information or items for protection under
19 this agreement must take care to limit any such designation to specific material that
20 qualifies under the appropriate standards. The designating party must designate for

1 protection only those parts of material, documents, items, or oral or written
2 communications that qualify, so that other portions of the material, documents,
3 items, or communications for which protection is not warranted are not swept
4 unjustifiably within the ambit of this agreement.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations
6 that are shown to be clearly unjustified or that have been made for an improper
7 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or
8 to impose unnecessary expenses and burdens on other parties) expose the
9 designating party to sanctions.

10 If it comes to a designating party's attention that information or items that it
11 designated for protection do not qualify for protection, the designating party must
12 promptly notify all other parties that it is withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in
14 this agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise
15 stipulated or ordered, disclosure or discovery material that qualifies for protection
16 under this agreement must be clearly so designated before or when the material is
17 disclosed or produced.

18 (a) Information in documentary form: (*e.g.*, paper or electronic
19 documents and deposition exhibits, but excluding transcripts of depositions or other
20 pretrial or trial proceedings), the designating party must affix the word

1 “CONFIDENTIAL” to each page that contains confidential material. If only a
2 portion or portions of the material on a page qualifies for protection, the producing
3 party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
4 markings in the margins).

5 (b) Testimony given in deposition or in other pretrial proceedings:
6 the parties and any participating non-parties must identify on the record, during the
7 deposition or other pretrial proceeding, all protected testimony, without prejudice to
8 their right to so designate other testimony after reviewing the transcript. Any party
9 or non-party may, within fifteen days after receiving the transcript of the deposition
10 or other pretrial proceeding, designate portions of the transcript, or exhibits thereto,
11 as confidential. If a party or non-party desires to protect confidential information at
12 trial, the issue should be addressed during the pre-trial conference.

13 (c) Other tangible items: the producing party must affix in a
14 prominent place on the exterior of the container or containers in which the
15 information or item is stored the word “CONFIDENTIAL.” If only a portion or
16 portions of the information or item warrant protection, the producing party, to the
17 extent practicable, shall identify the protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
19 failure to designate qualified information or items does not, standing alone, waive
20 the designating party’s right to secure protection under this agreement for such

1 material. Upon timely correction of a designation, the receiving party must make
2 reasonable efforts to ensure that the material is treated in accordance with the
3 provisions of this agreement.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any party or non-party may challenge a
6 designation of confidentiality at any time. Unless a prompt challenge to a
7 designating party's confidentiality designation is necessary to avoid foreseeable,
8 substantial unfairness, unnecessary economic burdens, or a significant disruption or
9 delay of the litigation, a party does not waive its right to challenge a confidentiality
10 designation by electing not to mount a challenge promptly after the original
11 designation is disclosed.

12 6.2 Meet and Confer. The parties must make every attempt to resolve any
13 dispute regarding confidential designations without court involvement. Any motion
14 regarding confidential designations or for a protective order must include a
15 certification, in the motion or in a declaration or affidavit, that the movant has
16 engaged in a good faith meet and confer conference with other affected parties in an
17 effort to resolve the dispute without court action. The certification must list the date,
18 manner, and participants to the conference. A good faith effort to confer requires a
19 face-to-face meeting or a telephone conference.

20 6.3 Judicial Intervention. If the parties cannot resolve a challenge without

1 court intervention, the designating party may file and serve a motion to retain
2 confidentiality. The burden of persuasion in any such motion shall be on the
3 designating party. Frivolous challenges, and those made for an improper purpose
4 (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may
5 expose the challenging party to sanctions. All parties shall continue to maintain the
6 material in question as confidential until the court rules on the challenge.

7 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
8 IN OTHER LITIGATION

9 If a party is served with a subpoena or a court order issued in other litigation
10 that compels disclosure of any information or items designated in this action as
11 “CONFIDENTIAL,” that party must:

12 (a) promptly notify the designating party in writing and include a
13 copy of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or
15 order to issue in the other litigation that some or all of the material covered by the
16 subpoena or order is subject to this agreement. Such notification shall include a copy
17 of this agreement; and

18 (c) cooperate with respect to all reasonable procedures sought to be
19 pursued by the designating party whose confidential material may be affected.

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
3 confidential material to any person or in any circumstance not authorized under this
4 agreement, the receiving party must immediately (a) notify in writing the designating
5 party of the unauthorized disclosures, (b) use its best efforts to retrieve all
6 unauthorized copies of the protected material, (c) inform the person or persons to
7 whom unauthorized disclosures were made of all the terms of this agreement, and
8 (d) request that such person or persons execute the “**Acknowledgment and**
9 **Agreement to Be Bound**” that is attached hereto as **Exhibit A**.

10 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
11 PROTECTED MATERIAL

12 When a producing party gives notice to receiving parties that certain
13 inadvertently produced material is subject to a claim of privilege or other protection,
14 the obligations of the receiving parties are those set forth in Federal Rule of Civil
15 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
16 may be established in an e-discovery order or agreement that provides for production
17 without prior privilege review. The parties agree to the entry of a non-waiver order
18 under Fed. R. Evid. 502(d) as set forth herein.

19 10. NON-TERMINATION AND RETURN OF DOCUMENTS

20 Within 60 days after the termination of this action, including all appeals, each

1 receiving party must return all confidential material to the producing party, including
2 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
3 appropriate methods of destruction.

4 Notwithstanding this provision, counsel are entitled to retain one archival
5 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
6 correspondence, deposition and trial exhibits, expert reports, attorney work product,
7 and consultant and expert work product, even if such materials contain confidential
8 material.

9 The confidentiality obligations imposed by this agreement shall remain in
10 effect until a designating party agrees otherwise in writing or a court orders
11 otherwise.

12 11. NON-WAIVER OF CERTAIN PRIVILEGES

13 Pursuant to Fed. R. Evid. 502(d), the production of any documents in this
14 proceeding shall not, for the purposes of this proceeding or any other federal or state
15 proceeding, constitute a waiver by the producing party of any privilege applicable
16 to those documents, including the attorney-client privilege, attorney work-product
17 protection, or any other privilege or protection recognized by law.

1 **IT IS SO ORDERED.** The District Court Executive is directed to file this
2 order and provide copies to the parties.

3 **DATED** December 16, 2022.

4
5 s/Mary K. Dimke
6 MARY K. DIMKE
7 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Eastern
District of Washington on _____ [date] in the case of KWIK LOK
CORP., a Washington Corporation, Plaintiff/Counterclaim Defendant, vs.
MATTHEWS INTERNATIONAL CORP., D/B/A MATTHEWS AUTOMATION
SOLUTIONS, a Pennsylvania Corporation, Defendant/Counterclaim Plaintiff, vs.
MATTHEW INTERNATIONAL CORP., a Pennsylvania corporation, Third-Party
Plaintiff, vs. SOLARIS LASER, S.A., a Polish entity, Third-Party Defendant in Case
No. 1:22-cv-03014-MKD. I agree to comply with and to be bound by all the terms
of this Stipulated Protective Order and I understand and acknowledge that failure to
so comply could expose me to sanctions and punishment in the nature of contempt.
I solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Eastern District of Washington for the purpose of enforcing the terms of this

1 Stipulated Protective Order, even if such enforcement proceedings occur after
2 termination of this action.

3 Date: _____

4 City and State where sworn and signed: _____

5 Printed name: _____

6 Signature: _____